

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ELIZABETH STARKEY

Plaintiff,

AFFIDAVIT

vs.

Civil Case No. 07-cv-00662

FIRSTSOURCE ADVANTAGE, LLC

Defendant.

STATE OF NEW YORK)
) ss:
COUNTY OF ERIE)

Melissa Kotas, being duly sworn deposes and says as follows:

1. This affidavit is submitted in support of defendant's Firstsource Advantage, LLC's ("Firstsource") opposition to plaintiff's partial motion for summary judgment.

2. I have been employed by Firstsource for approximately 9 years and am currently a dialer manager at Firstsource.

3. Part of my responsibilities as a dialer manager is to manage the Firstsource automated dialing system. In this capacity, I have intimate knowledge of Firstsource's automated collection activity and Account Notes.

4. In January 2007, Time Warner sent Elizabeth Moore's file to Firstsource in an attempt to collect the subject debt.

5. At that time, an account was opened and calls commenced to be made to the phone number, (716) 984-3012, provided by Time Warner in an attempt to collect the debt. A review of the Account Notes on this matter exhibits that Firstsource did not conduct its own investigation for contact information on the account and the only phone number called by

Firstsource was the one provided by Time Warner. A copy of the subject Account Notes is attached as **Exhibit A**.

6. The calls placed to the subject phone number would have been made via live operator and automated dialing systems.

7. Firstsource utilizes two automated dialer devices, a predictive dialer (which goes through Firstsource's own dialer process) and SoundBite (which is a hosted automated dialer from a third-party vendor).

8. Neither at the present time or in 2007, when collection calls were made on this account, did the Firstsource dialer system have the capacity to store, produce or call randomly or sequentially generated telephone numbers.

9. Reviewing the Account Notes for this file, the first automated call to the (716) 984-3012 number was on January 9, 2007. See Exhibit A at p. 1.

10. The non-SoundBite dialer notations on the Account Notes equal one call total to that number on the date indicated.

11. The Starkey Account Notes exhibit 13 SoundBite notations total and three dialer notations total.

12. On March 26, 2007, a Firstsource operator spoke with Ms. Starkey who stated that she could not make any payments until April 20, 2007 and that she was broke. See Exhibit A at p. 2.

13. The Account Notes do not reflect that Ms. Starkey requested the collection calls to cease. See Exhibit A at p. 2. Such a request would have been noted in the Account Notes by the Firstsource operator.


14. Collection calls continued to be made on the account until May 22, 2007, when Ms. Starkey agreed to make payments to pay in full the total debt owed. See Exhibit A at p. 3.

15. No calls were placed to the subject phone number following May 22, 2007.

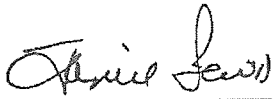
16. Upon information and belief, at no point during Firstsource's collection activity on the subject account was there a request that Firstsource cease making calls, and a cease and desist letter was never sent on the subject account.

17. The total balance for the debt owed on the account was paid in full.

18. As a dialer manager, I am fully familiar with Account Notes. The Account Notes attached to this affidavit are true and accurate copies of the Account Notes within our file and they have not been altered in any manner.


Melissa Kotas

Sworn to before me this
6th day of August, 2009



Notary Public

JANICE LEWIS
Notary Public, State of New York
Qualified in Erie County
My Commission Expires Jan. 27, 2011

F'RSTSOURCE, ADVANTAGE, LLC

13:59:43 19 MAR 2008

CLIENT# TWC104 TIME WARNER CABLE
 ACCOUNT# 6847421
 NAME STARKEY, ELIZABET E
 NAME2
 ADDRESS 5408 S MAELOU DR
 ADDRESS2
 CITY HAMBURG
 ST/ZIP NY 14075
 PHONE ****GC REVIEW***
 NOTE LNS 135
 DESK/UNIT WJE
 DOB
 SSN
 DRL
 CLIENT REF# 3383462
 FWD-CLIENT
 INT RATE(D) 0
 PACKET#
 --- SPECIAL FIELDS ---
 TYPE
 DATE
 AUDITOR

--OWING-- -RECEIVED-
 AGN/AMT 186.36 186.36
 INT 0.00 0.00
 CANCELLED 0.00
 ATTORNEY 0.00 0.00
 COURT 0.00 0.00
 MISC 0.00 0.00
 TOTAL*** 186.36 186.36
 NET W/JMT** 0.00
 STATUS: PIF COMM: .18
 -- DATE --
 ASSIGNED 01-08-07
 LAST CHG
 LAST PAY 06-28-07
 LAST ACT 11-08-07
 CL LC/LP
 INTR EFF 06-28-07
 STD MET?
 SCORE
 SPARE

ASSIGNED AMOUNTS

--OWING-- -RECEIVED-
 PRINCIPAL 186.36 186.36
 ASGN INT 0.00 0.00
 COMM FEES 0.00 0.00
 AMISC1 0.00 0.00
 AMISC2 0.00 0.00
 AMISC3 0.00 0.00
 AMISC4 0.00 0.00
 AMISC5 0.00 0.00
 AMISC6 0.00 0.00
 AMISC7 0.00 0.00
 AMISC8 0.00 0.00
 AMISC9 0.00 0.00

MISCELLANEOUS AMOUNTS

--OWING-- -RECEIVED-
 MISC 0.00 0.00
 OVERPMT 0.00 0.00
 MISC1 0.00 0.00
 MISC2 0.00 0.00
 MISC3 0.00 0.00
 MISC4 0.00 0.00
 MISC5 0.00 0.00
 MISC6 0.00 0.00
 MISC7 0.00 0.00

--- NOTES ---

* (001) 10:21 01-08-07 BEG STRAT MAINSTRAT1
 * (002) 10:21 01-08-07 END STRAT MAINSTRAT1
 * (003) 10:21 01-08-07 BEG STRAT MAINSTRAT2
 * (004) 10:21 01-08-07 END STRAT MAINSTRAT2
 * (005) 10:21 01-08-07 BEG STRAT NOTICE
 * (006) 10:21 01-08-07 REQ SERIES NOTICE (NOTICE-8)
 * (007) 10:21 01-08-07 END STRAT NOTICE
 * (008) 08:07 01-09-07 REC FASTDATA REPORT |CHA
 * (009) 08:12 01-09-07 SNT NTC N1
 * (010) 15:17 01-09-07 ODSK:813 |RD
 * (011) 16:21 01-09-07 ACCT SENT TO SOUNDBITE |SHB
 (012) 22:33 01-09-07 SNDBITE TEL RES - LMTCB ON MACH
 * (013) 22:33 01-09-07 CALLED ON 01/09/2007 - 17:48:58
 * (014) 12:35 01-11-07 ACCT SENT TO SOUNDBITE |SHB
 (015) 22:58 01-11-07 SNDBITE TEL RES - LMTCB ON MACH
 * (016) 22:58 01-11-07 CALLED ON 01/11/2007 - 16:53:08
 * (017) 15:05 01-12-07 ACCT SENT TO SOUNDBITE |SHB
 (018) 22:07 01-12-07 SNDBITE TEL RES - LMTCB ON MACH
 * (019) 22:07 01-12-07 CALLED ON 01/12/2007 - 15:51:25
 * (020) 12:45 01-19-07 ACCT SENT TO SOUNDBITE |SHB
 (021) 22:57 01-19-07 SNDBITE - CH HU ON HOLD
 * (022) 22:57 01-19-07 CALLED ON 01/19/2007 - 18:38:58
 (023) 22:41 01-22-07 SNDBITE TEL RES - ANS MACH HU ON SNDBITE
 * (024) 22:41 01-22-07 CALLED ON 01/22/2007 - 17:08:56
 * (025) 09:23 01-24-07 ACCT SENT TO SOUNDBITE |SHB
 (026) 22:29 01-24-07 SNDBITE TEL RES - LMTCB ON MACH
 * (027) 22:29 01-24-07 CALLED ON 01/24/2007 - 16:23:42
 * (028) 14:39 01-26-07 ACCT SENT TO SOUNDBITE |SHB
 (029) 22:02 01-26-07 SNDBITE TEL RES - LMTCB ON MACH
 * (030) 22:02 01-26-07 CALLED ON 01/26/2007 - 15:52:34

--- NOTES --- FOR ACCOUNT 6847421 (CONTINUED)

* (031) 15:28 02-07-07 ACCT SENT TO SOUNDBITE |SHB
 * (032) 22:27 02-07-07 SNDBITE NO RESULT ON 02/07/2007 -
 (033) (CONT) 22:00:00
 * (034) 12:02 02-14-07 ACCT SENT TO SOUNDBITE |SHB
 (035) 22:54 02-14-07 SNDBITE TEL RES - MSG DLVRD TO LIVE PERSON
 * (036) 22:54 02-14-07 CALLED ON 02/14/2007 - 16:14:28
 * (037) 14:55 02-15-07 s-AMD MESS LEFT (RES 1900)
 * (038) 14:55 02-15-07 s-AMD MESS LEFT (RES 1900)
 * (039) 23:26 02-15-07 AMD MESS LEFT |900 |900
 * (040) 13:08 02-16-07 AMD MESS LEFT |900 |900
 * (041) 15:14 02-22-07 ACCT SENT TO SOUNDBITE |SHB
 * (042) 22:28 02-22-07 SNDBITE NO RESULT ON 02/22/2007 -
 (043) (CONT) 22:00:00
 * (044) 11:09 02-26-07 ACCT SENT TO SOUNDBITE |SHB
 (045) 22:18 02-26-07 SNDBITE TEL RES - LMTCB ON MACH
 * (046) 22:18 02-26-07 CALLED ON 02/26/2007 - 17:46:48
 * (047) 17:40 03-06-07 ACCT SENT TO SOUNDBITE |SHB
 * (048) 22:16 03-06-07 SNDBITE NO RESULT ON 03/06/2007 -
 (049) (CONT) 22:00:00
 * (050) 12:00 03-09-07 ACCT SENT TO SOUNDBITE |SHB
 (051) 22:41 03-09-07 SNDBITE TEL RES NO ANS
 * (052) 22:41 03-09-07 CALLED ON 03/09/2007 - 15:28:11
 * (053) 13:24 03-14-07 ACCT SENT TO SOUNDBITE |SHB
 * (054) 22:33 03-14-07 SNDBITE NO RESULT ON 03/14/2007 -
 (055) (CONT) 22:00:00
 * (056) 09:48 03-16-07 ACCT SENT TO SOUNDBITE |SHB
 (057) 23:21 03-16-07 SNDBITE TEL RES NO ANS
 * (058) 23:21 03-16-07 CALLED ON 03/16/2007 - 16:33:34
 * (059) 10:16 03-23-07 ACCT SENT TO SOUNDBITE |SHB
 (060) 22:23 03-23-07 SNDBITE - CH HU ON HOLD
 * (061) 22:23 03-23-07 CALLED ON 03/23/2007 - 16:15:48
 * (062) 11:46 03-26-07 ACCT SENT TO SOUNDBITE |SHB
 (063) 12:05 03-26-07 RVWD CALLER ID #|716-649-5241 WB/AKI
 (064) 12:05 03-26-07 ADD NOTES|CH CNNT PIF, SHE NEEDS WB/AKI
 (065) PPL, STD THAT SHE NEEDS PPL, SHE
 (066) CANN'T DO ANYTHING TIL 4/20, REF
 (067) 50\$ STD SHE IOS BROKE
 (068) 12:06 03-26-07 CALL IN FOLLOW UP W/|WB/AKI
 * (069) 15:56 04-18-07 ACCT SENT TO SOUNDBITE |SHB
 (070) 22:58 04-18-07 SNDBITE TEL RES - LMTCB ON MACH
 * (071) 22:58 04-18-07 CALLED ON 04/18/2007 - 19:44:11
 * (072) 08:19 04-21-07 ACCT SENT TO SOUNDBITE |SHB
 (073) 22:23 04-21-07 SNDBITE TEL RES NO ANS
 * (074) 22:23 04-21-07 CALLED ON 04/21/2007 - 11:43:53
 * (075) 12:16 04-23-07 ACCT SENT TO SOUNDBITE |SHB
 (076) 22:43 04-23-07 SNDBITE TEL RES NO ANS
 * (077) 22:43 04-23-07 CALLED ON 04/23/2007 - 15:02:20
 * (078) 17:32 04-24-07 ACCT SENT TO SOUNDBITE |SHB
 * (079) 22:26 04-24-07 SNDBITE NO RESULT ON 04/24/2007 -
 (080) (CONT) 22:00:00
 * (081) 14:55 04-25-07 ACCT SENT TO SOUNDBITE |SHB
 (082) 22:23 04-25-07 SNDBITE TEL RES - LMTCB ON MACH
 * (083) 22:23 04-25-07 CALLED ON 04/25/2007 - 19:35:00
 * (084) 09:29 04-26-07 ACCT SENT TO SOUNDBITE |SHB
 (085) 22:28 04-26-07 SNDBITE TEL RES NO ANS
 * (086) 22:28 04-26-07 CALLED ON 04/26/2007 - 18:53:45

--- NOTES --- FOR ACCOUNT 6847421 (CONTINUED)

* (087) 09:28 04-27-07 ACCT SENT TO SOUNDBITE |SHB
 (088) 23:00 04-27-07 SNDBITE TEL RES - LMTCB ON MACH
 * (089) 23:00 04-27-07 CALLED ON 04/27/2007 - 14:25:14
 (090) 00:15 05-08-07 SNDBITE TEL RES NO ANS
 * (091) 00:15 05-08-07 CALLED ON 05/07/2007 - 15:42:18
 * (092) 08:58 05-09-07 ACCT SENT TO SOUNDBITE |SHB
 * (093) 17:57 05-11-07 s-AMD MESS LEFT (RES !900)
 * (094) 01:38 05-12-07 AMD MESS LEFT |900 |900
 * (095) 18:45 05-17-07 s-AMD MESS LEFT (RES !900)
 * (096) 00:21 05-18-07 AMD MESS LEFT |900 |900
 * (097) 10:13 05-21-07 ACCT SENT TO SOUNDBITE |SHB
 (098) 22:11 05-21-07 SNDBITE TEL RES - LMTCB ON MACH
 * (099) 22:11 05-21-07 CALLED ON 05/21/2007 - 14:09:41
 (100) 17:43 05-22-07 RVWD CALLER ID #|716-984-3012 WB/WLN
 (101) 17:44 05-22-07 TEL RES PTP GV MM, RQST PIF|WB/WLN
 (102) OST:ACTCH WILL PAY 50.00..ON MAY
 (103) 31 ,JUNE 14 68.18..AND JUNE 28
 (104) FOR 68.18 50.00 05-31-07
 * (105) 17:52 05-22-07 PDCHK #999 50.00 05-31-07 (ADD) |WLN
 * (106) 17:52 05-22-07 PDCHK #1000 68.18 06-14-07 (ADD) |WLN
 * (107) 17:52 05-22-07 PDCHK #1001 68.18 06-28-07 (ADD) |WLN
 * (108) 17:52 05-22-07 PD CHECKS 186.36 3 OST:PTP |WLN
 * (109) 01:05 05-23-07 PD CHECK REQ LTR# PD
 * (110) 08:09 05-23-07 ODSK:AD1 |MSD
 * (111) 08:13 05-23-07 SNT LTR PD
 * (112) 01:13 05-26-07 PDCHK #999 50.00 05-31-07 SELECTED
 * (113) 07:03 05-31-07 Q-CHK #999 50.00 05-31-07 PRINTED |RRE
 * (114) 07:38 05-31-07 TC=1 50.00 AP-A PD AUTO POST 999 |RRE
 (115) (CONT) COM=9.00
 * (116) 22:57 06-03-07 PD CHECK REQ LTR# PD
 * (117) 09:47 06-04-07 SNT LTR PD
 * (118) 01:04 06-09-07 PDCHK #1000 68.18 06-14-07 SELECTED
 * (119) 07:19 06-14-07 TC=1 68.18 AP-A PD AUTO POST 1000 |SHI
 (120) (CONT) COM=12.27
 * (121) 07:20 06-14-07 Q-CHK #1000 68.18 06-14-07 PRINTED |SHI
 * (122) 22:53 06-17-07 PD CHECK REQ LTR# PD
 * (123) 07:35 06-19-07 SNT LTR PD
 * (124) 01:22 06-23-07 PDCHK #1001 68.18 06-28-07 SELECTED
 * (125) 07:19 06-28-07 TC=1 68.18 AP-A PD AUTO POST 1001 |MGU
 (126) (CONT) OST:PDC COM=12.27
 * (127) 07:32 06-28-07 Q-CHK #1001 68.18 06-28-07 PRINTED |MGU
 * (128) 00:53 07-03-07 PD CHECKS COMPLETED, ADD TO TICKLER
 * (129) 03:40 07-03-07 REM BY 0 BAL
 * (130) 16:48 07-13-07 ADD TO TICKLER |WLN
 (131) 16:49 07-13-07 COLL RVW ACCT HAS BEEN SETTLED|WB/WLN
 * (132) 04:31 07-14-07 REM BY 0 BAL
 * (133) 23:19 07-28-07 CANCELLED (PIF CLOSE)-PIF 0.00
 * (134) 12:43 11-08-07 ODSK:WLN |WJE
 * (135) 12:44 11-08-07 OPH#:716-984-3012 |WJE

--- FINANCIAL INFORMATION --- FOR ACCOUNT 6847421

(4) EMP1 PHN *****GC REVIEW*****
 (5) AREA CODE 716
 (15) 1ST PAY \$ 50.00
 (16) 1ST PAY DT 05-31-07

--- FINANCIAL INFORMATION --- FOR ACCOUNT 6847421 (CONTINUED)

(86) SCORE ****
(87) TYPE *****
(164) STATUS DISC
(165) DISC DATE 09/22/06
(166) DISC RSN DONT USE
(167) OTHER ADDR S 5408 MAELOU DR
(168) OTHER CSZ HAMBURG NY 14075
(169) CURRENT 0.00
(170) 30 DAYS 0.00
(171) 60 DAYS 0.00
(172) 90 DAYS 113.44
(173) 120 DAYS 72.92
(387) 1STDATA DT 01-09-07
(478) DORP 1
(479) LST ACTION 163
(480) LSTACT DT 05-22-07
(483) 1ST RPC AC 783
(484) 1ST RPC DT 03-26-07
(500) SNDBITE DT 05-21-07
(832) TRGT SCORE ****